



Board of Adjustment

STAFF REPORT

DEVELOPMENT SERVICES DEPARTMENT

100 NW 1ST AVENUE, DELRAY BEACH, FLORIDA 33444

PLANNING & ZONING DIVISION: (561) 243-7040 • BUILDING DIVISION: (561) 243-7200

Board of Adjustment

Meeting: August 1, 2019

File No.: 2019-170 VAR-BOA

Application Type: Board of Adjustment

General Data:

Agent: Thomas F. Carney Jr.

Applicant: Kenneth Kaltman and Rita Dew

Location: 324 Harmon Ct.

PCN: 12-43-46-16-A8-004-0040

Property Size: 0.17 Acres

FLUM: LD (Low Density)

Zoning: R-1-AAA (Single Family)

Adjacent Zoning:

- R-1-AAA (North)
- R-1-AAA (West)
- R-1-AAA (South)
- R-1-AAA (East)

Existing Land Use: Single Family Home

Proposed Land Use: Single Family Home



Item before the Board:

Consideration of a variance to allow a swimming pool to encroach 16.97 feet into the required 35 feet front setback for the property located at 324 Harmon Court., pursuant to Land Development Regulations (LDR) Section 4.6.15(G)(1).

Optional Board Motions:

- A. Move to continue with direction.
- B. Approve the Variance request (BOA 2019-170) to LDR Section 4.6.15(G)(1) to allow the swimming pool to encroach in the required 35-foot front setback (16.97 feet is proposed) located at **324 Harmon Ct**, by adopting the findings of fact and law contained in the staff report, and finding that the request is consistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).
- C. Deny the Variance request (BOA 2019-170) to LDR Section 4.6.15(G)(1) to allow the swimming pool to encroach in the required 35-foot front setback (16.97 feet is proposed) located at **324 Harmon Ct**, by adopting the findings of fact and law contained in the staff report, and finding that the request is not consistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).

Background:

The property consists of Crego Subdivision Amend. PL 3 north 100 feet of east 75 feet of west 450 feet of lot 4 also known as lots 9 & 10 of the unrecorded Plat of Higley Subdivision of Ocean Beach Lot 4, located in fraction of the east half of Section 16-46-43. The variance request is to allow a swimming pool to encroach in the 35-foot front setback. The proposed setback is 18.03 feet. Pursuant to Land Development Regulation (LDR) 4.6.15(G)(1), Swimming Pools shall not extend into the front yard setback as noted in Section 4.3.4(K). Per LDR 4.3.4(K), the required front yard setback for properties located within the R-1-AAA zoning district is 35 feet.

Project Planner:

Jennifer Buce, Assistant Planner
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Review Dates:

BOA Board:
August 1, 2019

Attachments:

- 1. Site Plans
- 2. Pictures

**Variance Analysis:**

Pursuant to **LDR Section 2.2.4(D)(4)**, the Board of Adjustment has the authority to grant variances and hear appeals from the provisions of the supplemental district regulations (Article 4.6) except where said authority is expressly prohibited or granted to others.

Pursuant to **LDR Section 2.4.7(A)(5), Variances: Findings**, the following findings must be made prior to approval of a variance:

MET	NOT MET	FINDINGS
x		(a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings subject to the same zoning (The matter of economic hardship shall not constitute a basis for the granting of a variance);
x		(b) That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning;
x		(c) That the special conditions and circumstances have not resulted from actions of the applicant;
x		(d) That granting the variance will not confer onto the applicant any special privilege that is denied to other lands, structures, and buildings under the same zoning. Neither the permitted, nor nonconforming use, of neighborhood lands, structures, or buildings under the same zoning shall be considered grounds for the issuance of a variance;
x		(e) That the reasons set forth in the variance petition justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; and,
x		(f) That the granting of the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

In consideration of the findings noted above, the applicant has cited the following:

- (a) **Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings subject to the same zoning (The matter of economic hardship shall not constitute a basis for the granting of a variance).**

The applicant states *"This property is situated in one of the oldest neighborhoods in Delray Beach. Generally, the roads and/or alleyways in this pocket of Delray are narrow. The property consists of a house which was built in 1935. The property owner does not wish to make any alterations to the existing structure in order to preserve the character of the house and the neighborhood. Lot size is narrow by comparison to other newer lots in Delray Beach. This swimming pool will be placed in such a fashion to preserve the integrity of the house, the integrity of the neighborhood, but at the same time provide for a swimming pool designed for the property recognizing the small lot size of the property. Based on where the house is siting and the property line, a setback of 18 feet will result in the installation of a swimming pool."*

Staff Variance Analysis

The property is 75' deep x 100' wide and is located in the R-1-AAA zoning district in the Crego Subdivision. The minimum lot dimensions for properties within the R-1-AAA is 100' deep x 110' wide. According to the legal description of the property, this lot is part of an unrecorded plat. There are three structures on the property; two of which were built in 1935 and one built in 1951. Two additions were constructed in the 1990's. The original, existing structures have an existing nonconformity with respect to the rear setback, which is a minimum of 12', whereas, the structures are 5'6" and 6'5" from the rear property line. The applicant is requesting to construct a 9.50' x 14.50' pool in the front setback, in which this is the only available area to place the pool. Due to the shallow depth of the lot and the placement of the original structures, a special circumstance exist which is peculiar to the lands, structures or buildings and does show a basis for a hardship.

- (b) **Literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning.**

The applicant states *"Without taking into consideration the size of the lot, the configuration of the neighborhood, and the fact that this involves preserving a 1935 structure, the setback requirements which are designed for lots throughout the city would render it impossible, if fully complied with to construct any type of swimming pool (or other structure for that matter.) As described in paragraph 4, below, the location of the proposed pool is really the only place it can go. Most of the properties with this same zoning do not have the same challenges as it relates to the size and narrowness of the lots (lot is only 7,500 feet; under current rules; typical lots in the R-1-AAA zoning have a SF minimum lot size."*

Staff Variance Analysis

The requirements for LDR Section 4.6.15(G)(1); Swimming Pools is applied city wide. However, the applicant has existing conditions that make it impossible for a pool to be constructed without impeding on the front setback. The request is to allow a variance for a 16.97' encroachment into the 35-foot required setback. It appears over the years that Lot four was subdivided by Meets and Bounds which created the unique lots that are situated on Sandpiper Lane and Harmon Court. These unique lots are mostly landlocked and situated such that the street forms a right angle. Therefore, granting this variance could deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning district.

(c) The special conditions and circumstances have not resulted from actions of the applicant.

The applicant states *"The neighborhood is a neighborhood complete with historic homes. Placement of the homes back in 1935 (approximately) were based on zoning conditions at that time. There is no other place to situate a swimming pool without tearing down structures"*.

Staff Variance Analysis

The actions are a not a direct result of the applicant. As stated above, the placement and structures are original from 1935 and 1951. The owners are choosing to preserve the structures instead of demolition of the structures and adding new construction to accommodate a pool and preserve the neighborhood.

(d) The granting the variance will not confer onto the applicant any special privilege that is denied to other lands, structures, and buildings under the same zoning. Neither the permitted, nor nonconforming use, of neighborhood lands, structures, or buildings under the same zoning shall be considered grounds for the issuance of a variance.

The applicant states *"The granting of this variance does not confer upon the applicant any special privilege. As stated, this is an older neighborhood where the lots typically are adjoining narrow streets and/or alleys. The situation in this older neighborhood, and on this lot is unique. The depth of this lot is only 75 feet. When you adjust for the 35' setback, and the rear setback, and the rear setback of 12', the actual building space is only 28 feet. This not the typical scenario. In these historical neighborhoods, in order to preserve these neighborhoods, setback accommodations need to be made to acknowledge the character of the neighborhood. This is not a situation that is duplicated in the other newer neighborhoods in Delray Beach"*

Staff Variance Analysis

The granting of a variance would not confer a special privilege that is denied to other lands, structures, and buildings. This is a unique property with the depth of the lot being shallow at 75' and a nonconforming lot in the R-1-AAA zoning district. There is a similar situation to 1207 and 1211 Hammond Road that granted variances for pools located in the front setback.

(e) That the reasons set forth in the variance petition justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

The applicant states *"The granting of the variance will allow a modest sized swimming pool (approximately 9' x 14') to be constructed on the property and the swimming pool constitutes a reasonable use of the land. The pool has been chosen with care to not disturb the character of the property and which recognizes the narrowness of the lot."*

Staff Variance Analysis

As noted in staff analysis above, the granting of the variance is justified. The depth of the property is shallow and nonconforming in the R-1-AAA zoning district. If a new construction were to be built, it would be challenging to meet the setbacks requirements to construct an accessory structure such as a pool as the setback for the rear in R-1-AAA zoning district is 12' and the front is 35' which would leave room for a 28' structure, thus very little room for a pool.

(f) That the granting of the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

The applicant states *"Regulations are designed to preserve certain local standards (applicable to that neighborhood) considering each neighborhood's unique character. This neighborhood is no different. It is an older neighborhood with homes close to 75 years old. The design and placement of the swimming pool is compatible with the neighborhood, and the preserving of the house which is important to the neighborhood and to the home owner."*



Staff Variance Analysis

The granting of the variance is in harmony with the neighborhood. Harmon Court is a unique Street with few homes on it and it will not infringe upon pedestrian or public view.

Please see attached additional justification.

Notice:

Per LDR Section 2.4.2(B)(1)(F) and 2.4.2(B)(1)(J)(I), The City shall provide notice to the property owners within 500 ft. of the perimeter of the property, which is the subject of the development application, mailed no later than 10 days prior to the public hearing. Notices were mailed and posted at City Hall and website on July 19, 2019.